

Lawyer's Oath

I, do solemnly swear that I will maintain allegiance to the Republic of the Philippines, I will support the Constitution and obey the laws as well as the legal orders of the duly constituted authorities therein; I will do no falsehood, nor consent to the doing of any in court; I will not wittingly or willingly promote or sue any groundless, false or unlawful suit, or give aid nor consent to the same; I will delay no man for money or malice, and will conduct myself as a lawyer according to the best of my knowledge and discretion, with all good fidelity as well to the courts as to my clients; and I impose upon myself these voluntary obligations without any mental reservation or purpose of evasion. So help me God.

PRACTICE OF LAW

Admission to the Bar

Who is admitted to the Bar? (Rule 138 of the Rules of Court)

1. One who is admitted according to the provisions of the Rules of the Court
2. Good and regular standing

Rule 138 of the Rules of Court

Section 1. Who may practice law. — Any person heretofore duly admitted as a member of the bar, or hereafter admitted as such in accordance with the provisions of this rule, and who is in good and regular standing, is entitled to practice law.

Definition

A. Black's Dictionary

The rendition of services requiring the knowledge and the application of legal principles and technique to serve the interest of another with his consent. It is not limited to appearing in court, or advising and assisting in the conduct of litigation, but embraces the preparation of pleadings, and other papers incident to actions and special proceedings, conveyancing, the preparation of legal instruments of all kinds, and the giving of all legal advice to clients. It embraces all advice to clients and all actions taken for them in matters connected with the law.

An attorney engages in the practice of law by maintaining an office where he is held out to be an attorney, using the letterhead describing himself as an attorney, counseling clients in legal matters, negotiating with opposing counsel about pending litigation, and fixing and collecting fees for services rendered by his associate.

B. Cayetano vs. Monsod

Practice of law means an activity, in or out of court, which requires the application of law, legal procedure, knowledge, training and experience. "To engage in the practice of law is to perform those acts which are characteristics of the profession. Generally, to practice law is to give notice or render any kind of service, which device or service requires the use in any degree of legal knowledge or skill"

Note: The *Cayetano* case emphasizes that the practice of law is not limited to appearing in court.

C. People vs. Villanueva

Practice of law to fall within the prohibition of the statute has been interpreted as customarily or habitually holding one's self out to the public as a lawyer and demanding payment for such services.

Note: *Villanueva* emphasizes on the habituality of practice

D. ULEP vs. Legal Clinic

The practice of law is not limited to the conduct of cases in court. It includes legal advice and counsel, and the preparation of legal instruments and contract by which legal rights are secured, although such matter may or may not be pending in court.

E. Lingan vs. Calubaquib and Baliga

This Court has the exclusive jurisdiction to regulate the practice of law. When this Court orders a lawyer suspended from the practice of law, the lawyer must desist from performing all functions requiring the application of legal knowledge within the period of suspension. This includes desisting from holding a position in the government requiring the authority to practice law.

Note: *Lingan* emphasizes on the desistance of the lawyer to hold a governmental office that requires the authority to practice law once he is suspended.

Practice of Law: A Privilege

Practice of law is a privilege but in some way (or some degree) a right because it cannot be removed or revoked whimsically or capriciously without due process of law and just cause.

It is a Privilege

A. Overgaard vs. Valdez

We must emphasize that the right to practice law is not a natural or Constitutional right but is in the nature of a privilege or franchise, and it may be extended or withheld by this Court in the exercise of its sound discretion.

B. In re: Edillon

But we must here emphasize that the practice of law is not a property right but a mere privilege, and as such must bow to the inherent regulatory power of the Court to exact compliance with the lawyer's public responsibilities.

C. Ramos vs. Mandagan

The practice of law is considered a privilege bestowed by the State on those who show that they possess and continue to possess the legal qualifications for the profession. As such, lawyers are expected to maintain at all times a high standard of legal proficiency, morality, honesty, integrity and fair dealing, and must perform their four-fold duty to the society, the legal profession, the courts, and their clients, in accordance with the values and norms embodied in the Code.

Note: *Ramos* emphasizes on the four-fold duties of a lawyer and the five proficiency standards as a lawyer.

D. Office of the Court Administrator vs. Yu

Once again, we express our disdain for judges and attorneys who underseveredly think too highly of themselves, their personal and professional qualifications and qualities at the expense of the nobility of the Law Profession. It is well to remind the respondent that membership in the Law Profession is not like that in any ordinary trade. The Law is a noble calling, and only the individuals who are competent and fit according to the canons and standards set by this Court, the law and the *Rules of Court* may be bestowed the privilege to practice it.

Note: OCA emphasizes that only the individuals who are competent and fit according to the canons and standards set by this Court may be bestowed the privilege to practice it.

It is “In Some Way a Right”

A. Pineda (Legal and Judicial Ethics, 3rd ed.)

Lawyers cannot also be deprived of their license to practice law without due process. In this sense, the privilege to practice law is also a right by itself. But just like any other rights, it is subject to limitations.

B. Schwere vs. Board of Examiners

A State cannot exclude a person from the practice of law or from any other occupation in the manner of for reasons that contravene the Due Process Clause of the Fourteenth Amendment. (Pp. 353 U.S. 238-239)

C. Ex parte Garland, 71 US 4 Wall. 333 333 (1866)

The right of an attorney and counselor, acquired by his admission, to appear for suitors to argue causes, is not a mere indulgence — a matter of grace and favor — revocable at the pleasure of the court, or at the command of the legislature. It is a right of which he can only be deprived by the judgement of the court, for moral or professional delinquency.

D. Wilner vs. Committee on Character and Fitness

A State cannot exclude a person from the practice of law or from any other occupation in a manner or for reasons that contravene the Due Process or Equal Protection Clause (of the Fourteenth amendment)

We are not here concerned with the grounds which justify denial of a license to practice law, but only with what procedural due process requires if the license to be withheld. This is the problem which Chief Justice Taft adverted to in *Goldsmith vs. Board of Tax Appeals* involving an application of a certified public accountant to practice before the Board of Tax Appeals. Chief Justice Taft writing for the Court said:

We have examined in recent years that procedural due process often requires confrontation and cross examination of those whose words deprives a person of his livelihood.

That view has been taken by several state courts when it comes to procedural due process and the admission to practice law.

E. Marcos vs. Chief of Staff

American Jurisprudence says:

Sec. 99. Representation by Counsel. — It is the general rule that once accused of the crime has the right to be represented before the court by counsel, and this is

expressly so declared by the statutes controlling the procedure in court-martial.

It has been held that a constitutional provision extending that right to one accused in any trial in any court whatever applies to a court-martial gives the accused the undeniable right to defend by counsel, and that a court-martial has no power to refuse an attorney the right to appear before it if he is properly licensed to practice in the courts of the state.

F. Noriega vs. Sison

The importance of the dual aspects of the legal profession has been wisely put by Chief Justice Marshall of the United States when he said:

On one hand, the profession of an attorney is of great importance to an individual and the prosperity of his life may depend on its exercise. The right to exercise it ought not to be lightly or capriciously taken from him.

On the other hand, it is extremely desirable that the respectability if the Bar should be maintained and that its harmony with the bench should be preserved. For these objects, some controlling power, some discretion ought to be exercised with great moderation and judgement, but it must be exercised.

G. Tajan vs. Cusi

We entertain no doubt that a court has jurisdiction without any formal complaint or petition, upon its own motion, to strike the name of an attorney from the roll in a proper case, provided he has had legal reasonable notice, and been afforded an opportunity to be heard in his defense.

F. Rules of Court

Rule 138 of the Rules of Court

Section 30. Attorney to be heard before removal or suspension. — No attorney shall be removed or suspended from the practice of his profession, until he has had full opportunity upon reasonable notice to answer the charges against him, to produce witnesses in his own behalf, and to be heard by himself or counsel. But if upon reasonable notice he fails to appear and answer the accusation, the court may proceed to determine the matter ex parte.

Procedural due process requires that no attorney may be “removed or suspended from the practice of his profession, until he has had full opportunity upon reasonable notice to answer the charges against him, to produce witnesses in his own behalf, and to be heard by himself or counsel.”

Practice of Law is a Profession: Not a Trade or Business

A. Director of Religious Affairs vs. Bayot

Law is a profession and not a trade. The lawyer degrades himself and his profession who stoops to and adopts the practices of mercantilism by advertising his services or offering them to the public. As a member of the bar, he defiles the temple of justice with mercenary activities as the money-changer of the old defiled the temple of Jehovah.

B. Mayer vs. State of Bar

Its basic ideal is to render public service and to secure justice for those who seek its aid.

C. Linsangan vs. Tolentino

Time and time again, lawyers are reminded that the practice of law is a profession and not a business; lawyers should not advertise their talents as merchants advertise their wares. To allow a lawyer to advertise his talent or skill is to commercialize the practice of law, degrade the profession in the public's estimation and impair its ability to efficiently render that high character of service to which every member of the bar is called.

D. In a Matter of Petition for Authority to Continue Use of Law Firm Name (92 SCRA 1)

Primary characteristics which distinguish the legal profession from business are:

1. A duty of public service, of which the emoluments is a by product, and in which one may attain the highest eminence without making much money.
2. A relation as an "officer of court" to the administration of justice involving thorough sincerity, integrity, and reliability.
3. A fiduciary relationship with clients to the highest degree.
4. A relation to colleagues at the bar characterized by candor, fairness, and unwillingness to resort to current business methods of advertising and encroachment on their practice, or dealing directly with clients.

Pointers

1. Who can practice law according to the Rules of Court?

According to Sec. 1, Rule 138 of the Rules of Court, the requisites to practice law are:

1. One who is admitted to the bar
2. One who is admitted according to the provisions of the Rules of the Court
3. Good and regular standing

2. Degree of proficiency required of a lawyer according to the case discussed

In the case of *Ramos vs. Mandagan*, lawyers are expected to maintain at all times a high standard of legal proficiency, morality, honesty, integrity and fair dealing.

3. Four-fold duties of a lawyer

In the case of *Ramos vs. Mandagan* the four-fold duties embodied in the Code of Professional Responsibility are:

1. Duty to the society
2. Duty to the legal profession
3. Duty to the courts
4. Duty to their clients

4. Is the practice of law a privilege or a right

Practice of law is a privilege but in some way (or some degree) a right because it cannot be removed or revoked whimsically or capriciously without due process of law and just cause.

It is a privilege, as explained in *Overgaard vs. Valdez*, because the right to practice law is not a natural or Constitutional right but is in the nature of a privilege or

franchise, and it may be extended or withheld by this Court in the exercise of its sound discretion.

It is in some degree a right because lawyers cannot also be deprived of their license to practice law without due process. In this sense, the privilege to practice law is also a right by itself. But just like any other rights, it is subject to limitations (*Pineda, Legal and Judicial Ethics, 3rd ed.*)

5. The practice of law, to fall within the prohibition of the statute, has been interpreted as:

In *People vs. Villanueva*, to fall within the prohibition of the statute, has been interpreted as:

1. customarily or habitually holding one's self out to the public as a lawyer and
2. demanding payment for such services.

6. Write from memory the Lawyer's Oath

7. Memorize the practice of law according to Black's Dictionary

THE LAWYER AND THE SOCIETY

Code of Professional Responsibility

The *Code of Professional Responsibility* (CPR) is the controlling provision with regards to the ethical standards of the lawyers in the Philippines. However, the old *Canons of Professional Ethics* (CPE) may be supplementary to the CPR in cases where there are no provisions in certain cases.

The CPR has six (6) Canons, with each Canon divided into Rules.

CHAPTER I

The Lawyer and Society

CANON 1 — A lawyer shall uphold the constitution, obey the laws of the land and promote respect for law and for legal processes.

A lawyer shall:

- a. Uphold the Constitution
- b. Obey the laws of the land
- c. Promote respect for law and legal processes

Rule 1.01 A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

Rule 1.02 A lawyer shall not counsel or abet activities aimed at defiance of the law or at lessening confidence in the legal system.

Unlawful Conduct

Angel Bautista vs. Atty. Ramon Gonzales

However, respondent notes that Canon 10 of the old Canons of Professional Ethics, which states that “the lawyer should not purchase any interests in the subject matter of the litigation which he is conducting,” does not appear anymore in the new Code of Professional Responsibility. He therefore concludes that while a purchase by a lawyer of property in litigation is void under Art. 1491 of the Civil Code, such purchase is no longer a ground for disciplinary action under the new Code of Professional Responsibility

This Contention is without merit. The very first Canon of the new Code states that “a lawyer shall uphold the constitution, obey the laws of the land and promote respect for law and for legal processes.” Moreover, Rule 138, Sec. 3 of the Revised Rules of Court requires every lawyer to take an oath to obey the laws of the Republic of the Philippines as well as the legal orders of the duly constituted authorities therein.” And for any violation of this oath, a lawyer may be suspended or disbarred by the Supreme Court (Rule 138, Sec. 27, Revised Rules of Court). All these underscore the role of the lawyer as vanguard of our legal system. The transgression of any provision of law by a lawyer is a repulsive and reprehensible act which the Court will not countenance. In the instant case, respondent, having violated Art. 1491 of the Civil Code, must be held accountable for both his client and to society.

Gonzaga vs. Realubin

The Court agrees with the foregoing findings. The very first Canon of the Code of Professional Responsibility states that a “lawyer shall uphold the constitution, obey the laws of the land and promote respect for law and for legal processes.” Moreover, Rule 138, Sec. 3 of the Revised Rules of Court requires every lawyer to take an oath to obey the laws of the Republic of the Philippines as well as the legal orders of the duly constituted authorities therein.” And for any violation of this oath, a lawyer may be suspended or disbarred by the Supreme Court (Rule 138, Sec. 27, Revised Rules of Court). All these underscore the role of the lawyer as vanguard of our legal system. The transgression of any provision of law by a lawyer is a repulsive and reprehensible act which the Court will not countenance. In the instant case, respondent clearly violated the provisions of the Revised Administrative Code, more particularly Sec. 246 thereof.

Immoral Conduct

Julia Narag vs. Atty. Dominador Narag

Immoral conduct has been defined as that conduct which is so willful, flagrant, or shameless as to show indifference to the opinion of good and respectable members of the community. Furthermore, such conduct must not only be immoral, but grossly immoral. That is, it must be so corrupt as to constitute a criminal act or so unprincipled as to be reprehensible to a high degree or committed under such scandalous or revolting circumstances as to shock the common sense of decency.

GROSSLY IMMORAL CONDUCT

A grossly immoral conduct must be:

- a. So corrupt as to virtually constitute a criminal act
- b. So unprincipled as to be reprehensible to a high degree
- c. committed under such scandalous or revolting circumstances as to shock the common sense of decency (*Advincula vs. Macabata*)

1. *Adultery, bigamy, concubinage abandonment of legitimate wife and family, and refusal to support his legitimate or illegitimate children*

Paz Toledo vs. Atty. Jesus Toledo

Paz spent for law school of Jesus starting 2nd year. After passing the Bar, Jesus abandoned Paz and cohabited with a woman who bore 3 children for him.

2. *Seducing a woman to have carnal knowledge*

Barrientos vs. Daarol

Here, respondent, already a married man and about 41 years old, proposed love and marriage to complainant, then still 20 years old minor, knowing that she did not have the required legal capacity. Respondent then succeeded in having carnal relations with the complainant by deception, made her pregnant, suggested abortion, breached his promise to marry her, and then deserted her and the child. Respondent is therefore guilty of deceit and grossly immoral conduct.

3. *A case of married lawyer who impregnated a 20 year old woman and eventually abandoned her*

De Los Reyes vs. Aznar

In the present case, it was highly immoral of respondent, a married man with children, to have taken advantage of his position as chairman of the college of medicine in asking complainant, a student in the said college, to go with him to Manila where he had carnal knowledge of her under the threat that she would flunk in all her subjects in case she refused.

4. Delivering bribe money to a judge on request of client

Lee and Moreno vs. Judge Abastillas

WHEREFORE, respondent Judge Renato E. Abastillas, Regional Trial Court, Branch 50 Bacolod City, is hereby found GUILTY of serious misconduct in Adm. Matter No. RTJ-92863 for having met with persons involved and/or interested in Criminal Cases Nos. 10010 and 10011 entitled "People v. Johnson Lees and Sonny Moreno" of the Regional Trial Court of Bacolod City, for the purpose of discussing or soliciting bribe in connection said cases and is hereby DISMISSED from office, with forfeiture of all retirement benefits and accrued leave credits and with prejudice to re-employment in any branch or instrumentality of government, including government owned or controlled corporations.

This Court holds Atty. Enrique S. Chua administratively liable in Adm. Case No. 3815 for violation of Rule 1.01 of the Code of Professional Responsibility for allegedly bribing Judge Abastillas.

5. Issuance of a lawyer of a series of worthless checks

Victoria Heenan vs. Erlina Espejo

The fact that Atty. Espejo obtained the loan and issued the worthless checks in her private capacity and not as an attorney of Victoria is of no moment. As We have held in several cases, a lawyer may be disciplined not only for malpractice and dishonesty in his profession but also for gross misconduct outside of his professional capacity. While the Court may not ordinarily discipline a lawyer for misconduct committed in his non-professional or private capacity, the Court may be justified in suspending or removing him as an attorney where his misconduct outside of the lawyer's professional dealings is so gross in character as to show him morally unfit and unworthy of the privilege which his licenses and the law confer.

6. Notarizing SPAs not reflecting the true intent of his clients

de Miller vs. Miranda

A lawyer failed to check the original SPA submitted by his secretary. He ended up notarizing a document that did not reflect the true intent of his client.

Worse, the lawyer caused the intercalation of the notarized SPA by inserting handwritten alterations which changed the meaning of the document. This violates Rule 1.01 of the CPR

7. Deceiving a client for large sums of money for personal interest

Fernando Chu vs. Atty. Guico

Atty. Guico advised a client to raise a large sum of money to obtain a favorable decision in a labor case. Worse, he soon appropriated the money for his personal interest.

It was held as a violation of the Lawyer's Oath and Rule 1.01

Acts Not Considered As Grossly Immoral

Marcayda vs. Mari Wang

On the other hand, it has been held that mere intimacy between a man and a woman, either of whom possesses no legal impediment to marry, voluntarily carried on and devoid of any deceit on the part of the lawyer, is neither so corrupt nor so unprincipled as to warrant imposition of disciplinary sanction against him as a member of the bar, even if as a result of such relationship the woman gave birth to a child, and so long as he admits the paternity of, and agrees to support such child. He may be disciplined if he subsequently disowns or refuses to support the child

Advincula vs. Macabata

The acts of respondent, though in turing the head of complainant towards him and kissing her on the lips are distasteful. However, such an act, even if considered offensive and undesirable, cannot be considered grossly immoral.

Toledo vs. Abalos

A lawyer may not be disciplined for failure to pay a loan; proper remedy is to file an action for collection of sum of money in regular courts.

Lao vs. Medel

The deliberate failure to pay just debts and the issuance of worthless checks constitute gross misconduct, for which a lawyer may be sanctioned with one-year suspension from the practice of law.

Arciga vs. Maniwang

There is an area where a lawyer's conduct may not be in consonance with the canons of the moral code but he is not subject to disciplinary action because his misbehavior or deviation from the path of rectitude is not glaringly scandalous. It is in connection with a lawyer's behavior to the opposite sex where the question of immorality usually arises. Whether a lawyer's sexual congress with a woman not his wife or without the benefit of marriage should be characterized as "grossly immoral conduct," will depend on the surrounding circumstances.

This Court in a decision rendered in 1925, when old-fashioned morality still prevailed, observed that "the legislature well knows the frailty of the flesh and the ease with which a man, whose sense of dignity, honor, and morality is not well cultivated, falls into temptation when alone with onw of the fair sex toward whom he feels himself attracted. An occasion that the saying "A fair booty makes many a thief" or "An open door may tempt a saint" has become general." (*People vs. De la Cruz*, 48 Phil. 533, 535)

Segundino admits in his answer that he and Magdalena were lovers and that he is the father of the child Michael. He also admits that he repeatedly promised to marry Magdalena and that he breached that promise because of Magdalena's shady past. She had allegedly been accused in court of oral defamation and had already an illegitimate child before Michael was born.

The Solicitor General recommends the dismissal of the case. In his opinion, respondent's cohabitation with the complainant and his reneging on his promise of marriage do not warrant his disbarment.

Disbarment for Grossly Immoral Conduct

Almirez vs. Lopez

Where a lawyer, Arturo P. Lopez, succeeded in having carnal knowledge of Virginia C. Almirez, under the promise of marriage, which he refused to fulfill, although they had already a marriage license and despite the birth of a child in consequence of their sexual intercourse; he married another woman and during Virginia's pregnancy, Lopez urged her to take pills to hasten the flow of her menstruation and he tried to convince her to have an abortion to which she did not agree.

Cabrera vs. Agustin

Where a lawyer, Francisco Agustin, made Anita Cabrera believe that they were married before Leonicio V. Aglubat in the City Hall of Manila, and, after such fake marriage, they cohabited and she later gave birth to their child.

Toledo vs. Toledo, supra

Where a lawyer, Jesus B. Toledo, abandoned his lawful wife and cohabited with another woman who bore him a child.

Bolivar vs. Simbol

The conduct of Abelardo Simbol in making a dupe of Concepcion Bolivar by living on her bounty and allowing her to spend for his schooling and other personal necessities while dangling before her the mirage of a marriage, marrying another girl as soon as he had finished his studies, keeping his marriage a secret while continuing to demand money from complainant, and trying to sponge on her and persuade her to resume their broken relationship after the latter's discovery of his perfidy, are indicative of a character not worthy of a member of the bar.

Quingwa vs. Puno

Where Flora Quingwa, a public school teacher, who was engaged to lawyer Armando Puno, was prevailed upon by him to have sexual congress with him inside a hotel by telling her that it was alright to have sexual intercourse because, anyway, they were going to get married. She used to give Puno money upon his request. After she became pregnant and gave birth to a baby boy, Puno refused to marry her.

Mortel vs. Aspiras

Where lawyer Anacelto Aspiras, a married man, misrepresenting that he was single and making a promise of marriage, succeeded in having sexual intercourse with Josefina Mortel. Aspiras faked a marriage between Josefina and his own son Cesar.

Royong vs. Oblena

Where a lawyer, Ariston Oblena, who had been having an adulterous relationship for fifteen years with Bricia Angeles, a married woman separated from her husband, seduced her eighteen year old niece who became pregnant and begot a child.

Rule 1.03 A lawyer shall not, for any corrupt motive or interest, encourage any suit or proceeding or delay any man's cause.

Rule 1.04 A lawyer shall encourage his clients to avoid, end or settle the controversy if it will admit of a fair settlement.

To stir up litigation is a crime known as **maintenance** at common law (Agpalo). While the act is not a crime it is proscribed by the rules of legal ethics (Pineda).

Barratry, is the offense of frequently exciting and stirring up quarrels and suits, either at law or otherwise. It is the lawyers act of formenting suits among individuals and offering his legal services to one of them for monetary motives or purposes.

Ambulance chasing, is a lawyer's act of chasing an ambulance carrying the victim of an accident for the purpose of talking to the said victim or relatives and offering his legal services for filing of a case against the person who caused the accident, which spawned a number of recognized evils as follows:

- a. Formenting litigation with resulting burdens on the courts and the public
- b. Subornation and perjury
- c. Mulcting of innocent persons by judgements upon manufactured causes of action
- d. Defrauding of injured persons having proper causes of action, but ignorant of legal rights and court procedure, by means of contracts which retain exorbitant percentages of recovery and illegal charges for court costs and expenses and by settlements made for quick return of fees and against the just rights of the injured persons.

Ambulance chasing also applies the solicitation of almost any kind of legal business by an attorney, personally through an agent in order to gain employment. (*Linsangan vs. Tolentino*)

It is the duty of a counsel to advise his client, ordinarily a layman to the intricacies and vagaries of the law, on the merit or lack of merit of his case. If he finds that his client's cause is defenseless, then it is his bounden duty to advise the latter to acquiesce and submit, rather than traverse the incontrovertible. A lawyer must resist the whims and caprices of his client, and temper his clients propensity to litigate. A lawyer's oath to uphold the cause of justice is superior to his duty to his client; its primacy is indisputable. (*Castañeda vs. Ago*)

"Compromise is the better part of justice as prudence is the better part of valor", and a lawyer who encourages a compromise is no less than the client's champion in the settlement out of court than he is the client's champion in the battle court. (Charles Curtis, The Advocate, William Davenport, Voices in Court, 5)